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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	MM Docket No. 99-25
)	
Creation of a Low)	RM-9208
Power Radio Services)	RM-9242

TO: The Full Commission

**COMMENTS AND COUNTERPROPOSAL OF
ZILLAH SCHOOL DISTRICT #205**

Zillah School District #205 ("Zillah" or "School District"), by its attorney, hereby respectfully comments upon the proposal set forth in the Notice of Proposed Rule Making in this proceeding and submits a counterproposal as follows:

I. Petitioner and Its Interest in this Proceeding.

1. Zillah School District #205 is the legal entity which administers all of the schools, pre-school through high school, in the city of Zillah, Washington. Zillah is a small community of 1911 persons, situated about 15 miles from Yakima and about 50 miles from the tri-cities of Kennewick, Richland and Pasco. For a long time the School District has desired to implement a non-commercial educational FM broadcast station to serve as a teaching tool for students and as a general service to the community. However, because of frequency congestion resulting from the

proximity of Zillah to the above-described cities, it is not easy to find a suitable frequency.

2. The School District's representatives have learned, however, that it would be possible to allocate a "Class D", non-commercial, educational station in the School District. Indeed, hundreds and even thousands of educational Class D FM broadcast stations could be allocated to schools, community groups, and other eligible licensees all over the United States. The only barrier to the allocation of such stations is Section 73.512(c) of the Commission's Rules and Regulations, 47 C.F.R. §512(c), which prohibits the licensee of new Class D stations, except in Alaska. In Comments and a Counterproposal filed in this proceeding on April 23, 1998, prior to the adoption of the Notice of Proposed Rule Making, the School District urged the Commission to delete 47 C.F.R. §512(c), so as to allow the establishment of an LPFM service, utilizing Class D stations. The School District's Comments and Counterproposal seem to have been overlooked when the Notice of Proposed Rule Making was prepared, because there is no mention of them in the Notice. The School District, however, reiterates its original counterproposal as a counterproposal to the Notice of Proposed Rule Making.

II. Class D Educational FM Broadcast Stations.

3. Until 1978, the Commission's Rules provided for a category of non-commercial educational FM broadcast stations (NCE's), known as Class D stations. These are stations operating with no more than 10W transmitter power, which would be allocated in both the reserved band and the non-reserved band.

4. Effective October 13, 1978, however, the FCC amended its rules to adopt a new section, §73.512(c). Report, 43 FR 39704. Section 73.512(c), which is still on the books, effectively eliminated the licensing of new Class D stations, except in Alaska. What the School District

proposes is simply to delete §73.512(c). That will have the effect of once again authorizing the licensing of Class D stations, throughout the United States.

5. In its Notice of Proposed Rule Making, the Commission proposes to create at least two, possibly three, classes of LPFM radio stations (“LPFM”s). There is no need to remind the Commission that its proposal has generated intense controversy, because the proposal would provide no third adjacent channel protection to existing FM broadcast stations and possibly no second channel protection, either. The proposal has generated a storm of protest from existing broadcasters who fear that the value of their existing properties will be severely degraded, because of electrical interference from these newly created LPFM’s.

6. These fears are not necessarily overblown. Two years ago, when the undersigned represented Bell Broadcasting Company, a pirate radio station was established in Detroit, Michigan, on the second adjacent channel to Bell’s 50 kW flagship station in Detroit, WCHB. No sooner had the pirate began operating, then Bell was flooded with complaints from listeners that they could no longer receive Station WCHB in the area of town where the pirate station was located. The pirate station simply pulled the discriminator in the FM radios, so that its Spanish language programming drowned out the programming of Station WCHB. It might be thought that, with modern, digitally synthesized radio, this would not be a problem. However, it was a problem in many such radios, probably because the radio designers had not counted on the existence of a strong signal just two channels away from the main carrier.

7. The School District’s counterproposal has many advantages over the proposals set forth in the Notice of Proposed Rule Making, as follows:

(a) It allows the establishment of a much larger number of LPFM’s.

While these LPFM's would be limited to 10W transmitter power, effective radiated power of as much as 100W could be achieved by use of antenna gain. Thus, a large number of stations could be created and each station would still have enough power to cover a very large neighborhood.

(b) These Class D stations would provide full interference protection to existing stations. Thus, the authorization of such stations would not inspire or justify apprehension that LPFM would create electrical interference to full service stations for which existing broadcasters have paid many millions of dollars.

(c) No new technical requirements need to be adopted. Adequate regulations are already on the books. See 47 C.F.R. §73.509(b). Also, no new application forms need to be constructed. The existing application forms, applicable to NCE stations, are sufficient.

(d) Because Class D stations are non-commercial by definition, LPFM stations established pursuant to the School District's proposal will present no threat to the existing system of free commercial broadcasting which, obviously, needs to be preserved.

(e) Because of the need to meet specific eligibility requirements, set forth in the Commission's Rules, and sanctioned by the Congress when it enacted 47 C.F.R. Section 397(6), the Commission will not be confronted with a deluge of applications. Yet, the regulations are broad enough to allow the establishment of new Class D stations by community groups, as well as schools.

(f) While the Commission has proposed, tentatively, to choose amongst competing applications through the use of government auctions, Class D applicants could be selected by lottery. That is because Congress has authorized the use of random selection in the non-commercial FM service. See 47 U.S.C. §397(6). For schools and community groups who generally do not have a lot of money to spend, a random selection process offers a lot of advantages over an auction. Among other things, it insures that well-heeled persons or organizations will not buy up all of the available channels to the exclusion of the minorities and other small entities to which the Commission seeks to assist.

8. The School District's proposal represents a viable alternative to the Commission's

proposal to establish new classes of LPFM stations. One of the major flaws in the Commission's proposal is the use of auctions to allocate LPFM stations. Auctions merely invite wealthy people to buy up a large number of stations to the detriment of the minorities and community groups which the Commission seeks to assist.

9. The School District's proposal would allow the use of lotteries, which are a more equitable way of distributing these new LPFM licenses.

10. The School District's proposal also provides full protection from interference to all existing stations, which the Commission's proposal does not. Furthermore, the School District's proposal allows the establishment of a much larger number of LPFM's than the Commission's proposal would allow.

11. The School District's proposal does not require the establishment of any new technical standards. It does not even require the adoption of any new application forms. It can be readily implemented under technical standards which are already on the books.

Respectfully submitted,

April 15, 1999

ZILLAH SCHOOL DISTRICT #205

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